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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

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7 LEAH BOOKER,

Case No. 2:17-cv-02681-APG-PAL

8 Plaintiff,

9 v.

**ORDER**

10 SOCIAL SECURITY ADMINISTRATION,

(Am. Compl. – ECF No. 6)

11 Defendant.

12 Before the court is *pro se* Plaintiff Leah Booker's Amended Complaint (ECF No. 6), which  
13 is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local  
14 Rules of Practice.

15 **I. REPORT OF FINDINGS AND RECOMMENDATION (ECF No. 5)**

16 On January 5, 2018, the court entered a Report of Findings and Recommendation ("R&R")  
17 (ECF No. 5), which recommended that this case be dismissed because Ms. Booker failed to comply  
18 with the court's order that she file an amended complaint. Booker commenced this action on  
19 October 18, 2017, by filing an Application to Proceed *In Forma Pauperis* (ECF No. 1) and  
20 proposed complaint. The court granted her permission to proceed *in forma pauperis* ("IFP") and  
21 screened the complaint pursuant to 28 U.S.C. § 1915(e). *See* Screening Order (ECF No. 3). The  
22 court found that the proposed Complaint (ECF No. 4) failed to state a valid claim and allowed her  
23 30 days to amend her pleading. The screening order warned Ms. Booker that a failure to file an  
24 amended complaint by November 30, 2017, addressing the deficiencies explained in the Screening  
25 Order would result in a recommendation to the district judge that this case be dismissed.

26 By January 2018, Ms. Booker had not filed an amended complaint, requested an extension  
27 of time, or taken any other action to prosecute this case. The court therefore recommended  
28 dismissal unless she filed an amended complaint on or before February 5, 2018. R&R (ECF

1 No. 5). Booker filed an Amended Complaint (ECF No. 6) before the deadline. Thus, the court  
2 will vacate and withdraw the Report of Findings and Recommendation (ECF No. 5) and screen  
3 the new pleading.

## 4 **II. SCREENING THE AMENDED COMPLAINT**

### 5 **A. Legal Standards**

6 After granting a request to proceed IFP pursuant to § 1915, federal courts must screen a  
7 complaint and any amended complaints before allowing a case to move forward, issuing  
8 summonses, and requiring a responsive pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir.  
9 2000) (en banc) (§ 1915(e) “applies to all *in forma pauperis* complaints”). Courts are required to  
10 dismiss an IFP action if the complaint fails to state a claim upon which relief may be granted, is  
11 legally “frivolous or malicious,” or seeks money from a defendant who is immune from such relief.  
12 28 U.S.C. § 1915(e)(2). The standard for determining whether a plaintiff has failed to state a claim  
13 upon which relief can be granted under § 1915 is the same as the standard under Rule 12(b)(6) of  
14 the Federal Rules of Civil Procedure<sup>1</sup> for failure to state a claim. *Watison v. Carter*, 668 F.3d  
15 1108, 1112 (9th Cir. 2012). A screening under Rule 12(b)(6) is essentially a ruling on a question  
16 of law. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001) (noting that the purpose of Rule  
17 12(b)(6) is to test the legal sufficiency of a complaint).

18 A properly pled complaint must provide “a short and plain statement of the claim showing  
19 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To avoid dismissal, a plaintiff must  
20 allege enough facts to state a claim for relief that is plausible on its face. *Bell Atlantic Corp. v.*  
21 *Twombly*, 550 U.S. 544, 570 (2007). A claim has facial plausibility when a plaintiff alleges factual  
22 content that allows the court to make a reasonable inference that a defendant is liable for the claim  
23 alleged. *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (quoting *Ashcroft v.*  
24 *Iqbal*, 556 U.S. 662, 678 (2009)). This plausibility standard is not a “ ‘probability requirement,’  
25 but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556  
26 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). Although Rule 8(a) does not require detailed  
27 factual allegations, it demands “more than labels and conclusions.” *Iqbal*, 556 U.S. at 678. Merely

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28 <sup>1</sup> All references to a “Rule” or the “Rules in this Order refer to the Federal Rules of Civil Procedure.

1 reciting the elements of a cause of action and providing only conclusory allegations will not be  
2 enough to survive the court's review. *Id.* at 679–80. Allegations in a pro se complaint are held to  
3 less stringent standards than formal pleading drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338,  
4 342 n.7 (9th Cir. 2010)

5 When a court dismisses a complaint pursuant to § 1915, a plaintiff is ordinarily given leave  
6 to amend with directions as to curing its deficiencies, unless it is clear from the face of the  
7 complaint that the deficiencies could not be cured by amendment. *Cato v. United States*, 70 F.3d  
8 1103, 1106 (9th Cir. 1995). In addition, the Ninth Circuit has held it is reasonable for a district  
9 court to conclude that a plaintiff “simply *cannot* state a claim” when he “knowingly and repeatedly  
10 refuses to conform his pleadings to the requirements of the Federal Rules.” *Knapp v. Hogan*, 738  
11 F.3d 1106, 1110 (9th Cir. 2013) (quoting *Paul v. Marberry*, 658 F.3d 702, 705 (7th Cir. 2011)).  
12 Where a plaintiff has amended his or her pleadings multiple times but still has not provided a short  
13 and plain statement of the claim, dismissal under Rule 8(a) may be appropriate. *See id.*

14 Here, Ms. Booker appears to be challenging the Social Security Administration's (“SSA”)   
15 decision denying her benefits, although her new pleading does not explicitly say this. *See* Am.  
16 Compl. (ECF No. 6). To state a valid benefits claim, a complaint must give a defendant fair notice  
17 of what the plaintiff's claim is and the grounds upon which it rests. *Starr v. Baca*, 652 F.3d 1202,  
18 1216 (9th Cir. 2011) (noting that a complaint must contain sufficient factual allegations “to enable  
19 the opposing party to defend itself effectively”). A plaintiff must present sufficient detail for the  
20 court to understand the disputed issues so that it can meaningfully screen the complaint. *See* 4  
21 Soc. Sec. Law & Prac. § 56:4 (2015). To do so, a complaint should state *when* and *how* a plaintiff  
22 exhausted her administrative remedies with the SSA and the nature of her disability, including the  
23 date she claims she became disabled. The complaint should also contain a short and concise  
24 statement identifying *why* the SSA's decision was wrong and showing that the plaintiff is entitled  
25 to relief. *See Sabbia v. Comm'r Soc. Sec. Admin.*, 669 F. Supp. 2d 914, 918 (N.D. Ill. 2009).

## 26 **B. Exhaustion of Administrative Remedies**

27 Before a plaintiff can sue the SSA in federal court, she must have exhausted her  
28 administrative remedies. 42 U.S.C. § 405(g); *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th

1 Cir. 1989) (per curium) (“Section 405(g) provides that a civil action may be brought only after (1)  
2 the claimant has been party to a hearing held by the Secretary, and (2) the Secretary has made a  
3 final decision on the claim”). In general, when the SSA denies an application for disability  
4 benefits, the claimant can request reconsideration of the decision. If the claim is denied upon  
5 reconsideration, a claimant may request a hearing before an Administrative Law Judge (“ALJ”).  
6 If the ALJ denies the claim, a claimant may request review of the decision by the Appeals Council.  
7 If the Appeals Council declines to review the ALJ’s decision, a claimant may then request review  
8 by the United States District Court. *See* 20 C.F.R. §§ 404.981, 416.1481. A civil action for judicial  
9 review must be commenced within 60 days after receipt of the Appeals Council’s notice of a final  
10 decision. *Id.* *See also* 20 C.F.R. § 405.501. The SSA assumes that the notice of final decision  
11 will be received within five days of the date on the notice unless shown otherwise; thus, an action  
12 commenced within 65 days is presumed timely. The civil action must be filed in the judicial  
13 district in which the plaintiff resides. 42 U.S.C. § 405 (g).

14 In this case, the Amended Complaint does not provide a date when the SSA issued a  
15 decision denying Booker’s benefits claim. Ms. Booker does not indicate whether she requested  
16 review by the Appeals Council or whether the Appeals Council denied such request, in which case  
17 the ALJ’s decision became the final decision of the Commissioner. Without this information the  
18 court is unable to determine whether she has exhausted her administrative remedies or timely  
19 commenced this action. Accordingly, the Amended Complaint does not satisfy these two  
20 prerequisites for judicial review.

### 21 **C. Grounds for Ms. Booker’s Appeal and the Nature of her Disability**

22 A district court can affirm, modify, reverse, or remand a decision if a plaintiff has exhausted  
23 his administrative remedies and timely filed a civil action. However, judicial review of the  
24 Commissioner’s final decision is limited to determining whether: (1) there is substantial evidence  
25 in the record as a whole to support the Commissioner’s findings; and (2) the correct legal standards  
26 were applied. *Morgan v. Comm’r Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

27 Upon review of the original complaint, the court determined that Ms. Booker failed to state  
28 a claim upon which relief can be granted. *See* Screening Order (ECF No. 3). The entire complaint

1 was two-sentences: “The reason for this is to review medical records. There’s details that were  
2 overlooked medically.” Compl. (ECF No. 4). Booker did not state the nature of her disability or  
3 allege the date that the disability began. Screening Order at 4. Ms. Booker implied that the SSA’s  
4 decision to deny benefits was wrong (*i.e.*, medical details were overlooked), but she failed to  
5 explain *why* she believes the decision was wrong (*e.g.*, the record lacks substantial evidence to  
6 support the SSA’s decision, or an incorrect legal standard was applied). *Id.* The court found that  
7 a complaint merely stating the decision was wrong but failing to describe the underlying reasons  
8 was insufficient to satisfy Rule 8’s pleading requirement. *Id.* (citing *Starr*, 652 F.3d at 1216).

9       The Amended Complaint does not cure the deficiencies noted in the Screening Order.  
10 Although she does not specify which impairments the SSA evaluated in her claim, Ms. Booker  
11 describes multiple conditions and symptoms that render her disabled, including cervical lordosis,  
12 lumbar radiculitis, bipolar disorder, generalized anxiety disorder, dysthymia, spinal instability,  
13 back pain, dizziness, headaches, nausea, fatigue, confusion, and depression. She also provides a  
14 list of her medications, including dosages and frequencies. These allegations do not allow the  
15 court to make a reasonable inference that the record as a whole lacks substantial evidence to  
16 support the Commissioner’s findings or that an ALJ applied the wrong legal standards. Ms.  
17 Booker’s Amended Complaint still fails to describe *why* she believes the SSA’s decision was  
18 wrong. Thus, her description of conditions and symptoms rendering her disabled amounts to  
19 “labels and conclusions.” *Iqbal*, 556 U.S. at 678. The Amended Complaint therefore fails to state  
20 a claim upon which relief can be granted.

21       Because she is representing herself, Ms. Booker will be given a final opportunity to amend  
22 her complaint by **March 23, 2018**. The Clerk of the Court will be instructed to mail her a blank  
23 form complaint for review of social security decision.<sup>2</sup> The form complaint highlights certain  
24 types of information that is essential to the court’s screening and may aid plaintiffs in stating a  
25 colorable claim. Pro se plaintiffs are strongly encouraged to use the form.

26       The court appreciates that it is difficult for pro se parties to litigate their claims in federal

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27 <sup>2</sup> The Complaint for Review of Social Security Decision, Pro Se Form 13, is also available for download  
28 on the United States Courts’ website at <http://www.uscourts.gov/forms/pro-se-forms/complaint-review-social-security-decision>.

1 court. Plaintiffs are advised to familiarize themselves as much as possible with the Federal Rules  
2 of Civil Procedure, the Local Rules of Practice, applicable statutes and regulations, and relevant  
3 case law.<sup>3</sup> They may also be able to participate in the Federal Court Ask-A-Lawyer program  
4 coordinated by the Legal Aid Center of Southern Nevada.<sup>4</sup>

5 For the reasons explained,

6 **IT IS ORDERED:**

- 7 1. The Report of Findings and Recommendation (ECF No. 5) is **WITHDRAWN**.
- 8 2. Plaintiff Leah Booker's Amended Complaint (ECF No. 6) is **DISMISSED**  
9 **WITHOUT PREJUDICE**.
- 10 3. The Clerk of the Court shall MAIL Booker one blank Complaint for Review of Social  
11 Security Decision, Pro Se Form 13, and one copy each of the Screening Order (ECF  
12 No. 3), Complaint (ECF No. 4), Amended Complaint (ECF No. 6), and this Order.
- 13 4. Ms. Booker shall have until **March 23, 2018**, to file a second amended complaint, if  
14 she believes she can correct the noted deficiencies.
- 15 5. Ms. Booker shall clearly title the amended complaint as such by writing "SECOND  
16 AMENDED" immediately above "Complaint for Review of a Social Security  
17 Disability or Supplemental Security Income Decision" and write 2:17-cv-02681-APG-  
18 PAL in the space for "Case No."
- 19 6. Ms. Booker's failure to comply with this Order by submitting a second amended  
20 complaint before the **March 23, 2018** deadline will result in a recommendation to the  
21 district judge that this case be dismissed.

22 Dated this 23rd day of February, 2018.

23   
24 PEGGY A. FEEN  
25 UNITED STATES MAGISTRATE JUDGE

26 <sup>3</sup> The Federal Rules of Civil Procedure may be accessed on the United States Courts website at:  
27 [uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure](https://uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure). The Local  
Rules of Practice may be accessed and downloaded from this court's website at: [nvd.uscourts.gov](https://nvd.uscourts.gov).

28 <sup>4</sup> Information about the Federal Court Ask-A-Lawyer program is available on the Legal Aid Center of  
Southern Nevada's website at [lacs.nv.org/what-we-do/ask-a-lawyer](https://lacs.nv.org/what-we-do/ask-a-lawyer) or by calling 702-386-1070.